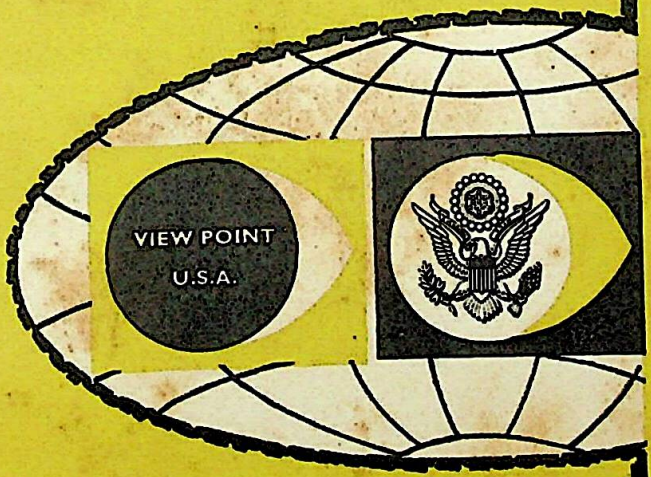
Viet-Nam And International Law



Text of Secretary of State Dean Rusk's address before the American Society of International Law in Washington, D.C., on April 23, 1965.

"The kind of world we seek is the kind set forth in the opening sections of the [United Nations] Charter: a world community of independent states, each with the institutions of its own choice, but cooperating with one another to promote their mutual welfare."

Viet-Nam And International Law

By Dean Rusk
U.S. Secretary of State

Secretary Rusk discusses International Law with relation to communist aggression against South Viet-Nam.

Viewpoint U.S.A.

Number twenty-seven in a continuing series of American policy statements.

Viet-Nam and International Law

WHEN THIS distinguished Society was founded 59 years ago, the then Secretary of State, Elihu Root, became its first President. With the passage of time, the Secretary of State has been elevated to a less demanding role, that of honorary President. Secretary Root himself not only established the precedent of becoming President while Secretary of State; he also superseded it by continuing to serve as your President for eighteen years. The proceedings of the first meeting indicate that Secretary Root not only presided and delivered an address, but that he also selected the menu for the dinner.

The year 1907, when the first of the Society's annual meetings was held, today appears to have been one of those moments in American history when we were concentrating upon building our American society, essentially untroubled by what took place beyond our borders. But the founders of this Society realized that the United States could not remain aloof from the world. It is one of the achievements of this Society that, from its inception, it has spread the realization that the United States cannot opt out of the community of nations—that international affairs are part of our national affairs.

Questions of war and peace occupied the Society at its first meeting. Among the subjects discussed were the possibility of the immunity of private property from belligerent seizure upon the high seas and whether trade in contraband of war was unneutral. Limitations upon recourse to force then proposed were embryonic, as is illustrated by the fact one topic for discussion related to restrictions upon the use of armed force in the collection of contract obligations. The distance between those ideas and the restrictions upon recourse to armed force contained in the Charter of the United Nations is vast. It is to these Charter restrictions—and their place in the practice and malpractice of states—that I shall address much of my remarks this evening.

II

CURRENT United States policy arouses the criticism that it is at once too legal and too tough. Time was when the criticism of American concern with the legal element in international relations was that it led to softness—to a "legalistic-moralistic" approach to foreign affairs which conformed more to the ideal than to the real. Today, criticism of American attachment to the rule of law is that it leads not to softness, but to severity. We are criticized not for sacrificing our national interests to international interests but for endeavouring to impose the international interest upon other nations.

We are criticized for acting as if the Charter of the United Nations means what it says. We are criticized for treating the statement of the law by the International Court of Justice as authoritative. We are criticized for taking collective security seriously.

This criticism is, I think, a sign of strength—our strength, and of the strength of international law. It is a tribute to a blending of political purpose with legal ethic.

American foreign policy is at once principled and pragmatic. Its central objective is our national safety and well-being—to ensure the blessings of liberty to ourselves and our posterity. But we know we can no longer find security and well-being in defences and policies which are confined to North America, or the Western hemisphere, or the North Atlantic community. This has become a very small planet. We have to be concerned with all of it—with all of its land, waters, atmosphere, and with surrounding space. We have a deep national interest in peace, the prevention of aggression, the faithful performance of agreements, the growth of international law. Our foreign policy is rooted in the profoundly practical realization that the purposes and principles of the United Nations Charter must animate the behaviour of states, if mankind is to prosper or is even to survive. Or at least they must animate enough states with enough will and enough resources to see to it that others do not violate those rules with impunity.

The Preamble and Articles One and Two of the

Charter set forth abiding purposes of American policy. This is not surprising, since we took the lead in drafting the Charter—at a time when the biggest war in history was still raging and we and others were thinking deeply about its frightful costs and the ghastly mistakes and miscalculations which led to it.

The kind of world we seek is the kind set forth in the opening sections of the Charter: a world community of independent states, each with the institutions of its own choice, but cooperating with one another to promote their mutual welfare . . . a world of expanding human rights and well-being . . . a world of expanding international law . . . a world in which an agreement is a commitment and not just a tactic.

We believe that this is the sort of world a great majority of the governments of the world desire. We believe it is the sort of world man must achieve if he is not to perish. As I said on another occasion: "If once the rule of international law could be discussed with a certain condescension as a Utopian ideal, today it becomes an elementary practical necessity. *Pacta sunt servanda* now becomes the basis for survival."

Unhappily, a minority of governments is committed to different ideas of the conduct and organization of human affairs. They are dedicated to the promotion of the communist world revolution. And their doctrine justifies any technique, any ruse, any deceit, which contributes to that end. They may differ as to tactics from time to time. And the two principal

communist powers are competitors for the leadership of the world communist movement. But both are committed to the eventual communization of the entire world.

The overriding issue of our time is which concepts are to prevail: those set forth in the United Nations Charter, or those proclaimed in the name of a world revolution.

III

THE PARAMOUNT commitment of the Charter is Article Two, Paragraph four, which reads: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

This comprehensive limitation went beyond the Covenant of the League of Nations. This more sweeping commitment sought to apply a bitter lesson of the inter-war period—that the threat or use of force, whether or not called "war," feeds on success. The indelible lesson of these years is that the time to stop aggression is at its very beginning.

The exceptions to the prohibitions on the use or threat of force were expressly set forth in the Charter. The use of force is legal:

—as a collective measure by the United Nations, or

—as action by regional agencies in accordance

with Chapter Eight of the Charter, or

—in individual or collective self-defence.

When Article Two, Paragraph four was written it was widely regarded as general international law, governing both members and nonmembers of the United Nations, and on the universal reach of the principle embodied in Article Two, Paragraph four, wide agreement remains. Thus, last year, a United Nations special committee on principles of international law concerning friendly relations and cooperation among states met in Mexico City. All shades of United Nations opinion were represented. The committee's purpose was to study and possibly to elaborate certain of those principles. The committee debated much and agreed on little. But on one point it reached swift and unanimous agreement: That all states, and not only all members of the United Nations, are bound to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. Nonrecognition of the statehood of a political entity was held not to affect the international application of this cardinal rule of general international law.

But at this same meeting in Mexico City, Czechoslovakia—with the warm support of the Soviet Union and some other members—proposed formally another exemption from the limitations on use of force. Their proposal stated that: "The prohibition of the use of force shall not affect . . . self-defence of

nations against colonial domination in the exercise of the right of self-determination."

The United States is all for self-determination. We are against colonial domination—we led the way in throwing it off. We have long favoured self-determination, in practice as well as in words—indeed, we favour it for the entire world, including the peoples behind the Iron and Bamboo curtains. But we could not accept the Czech proposal, and we were pleased that the special committee found the Czech proposal unacceptable.

The primary reason why we opposed that attempt to rewrite the Charter—apart from the inadmissibility of rewriting the Charter at all by such means—was that we knew the meaning behind the words. We knew that like so many statements from such sources, it used upside-down language—that it would in effect authorize a state to wage war, to use force internationally, as long as it claimed it was doing so to "liberate" somebody from "colonial domination." In short, the Czech resolution proposed to give to so-called "wars of national liberation" the same exemption from the limitation on the use of force which the Charter accords to defence against aggression.

What is a "war of national liberation?" It is, in essence, any war which furthers the communist world revolution—what, in broader terms, the communists have long referred to as a "just" war. The term "war of national liberation" is used not only to denote armed insurrection by people still under colonial rule

—there are not many of those left outside the communist world. It is used to denote any effort led by communists to overthrow by force any noncommunist government.

Thus the war in South Viet-Nam is called a "war of national liberation." And those who would overthrow various other noncommunist governments in Asia, Africa, and Latin America are called the "forces of national liberation."

Nobody in his right mind would deny that Venezuela is not only a truly independent nation but that it has a government chosen in a free election. But the leaders of the communist insurgency in Venezuela are described as leaders of a fight for "national liberation"—not only by themselves and by Castro and the Chinese communists, but by the Soviet communists.

A recent editorial in *Pravda* spoke of the "peoples of Latin America . . . marching firmly along the path of struggle for their national independence" and said: "The upsurge of the national liberation movement in Latin American countries has been to a great extent a result of the activities of communist parties." It added: "The Soviet people have regarded and still regard it as their sacred duty to give support to the peoples fighting for their independence. True to their international duty, the Soviet people have been and will remain on the side of the Latin American patriots."

In communist doctrine and practice, a noncom-

munist government may be labelled and denounced as "colonialists," "reactionary," or a "puppet," and any state so labelled by the communists automatically becomes fair game . . . while communist intervention by force in noncommunist states is justified as "self-determination" seems to mean that any communist nation can determine by itself that any noncommunist state is a victim of colonialist domination and therefore a justifiable target for a war of "liberation."

As the risks of overt aggression, whether nuclear or with conventional forces, have become increasingly evident, the communists have put increasing stress on the "war of national liberation." The Chinese communists have been more militant in language and behaviour than the Soviet communists. But the Soviet communist leadership also has consistently proclaimed its commitment in principle to support wars of national liberation. This commitment was reaffirmed as recently as Monday of this week by Mr. Kosygin.

International law does not restrict internal revolution within a state, or revolution against colonial authority. But international law does restrict what third powers may lawfully do in support of insurrection. It is these restrictions which are challenged by the doctrine, and violated by the practice, of "wars of liberation."

It is plain that acceptance of the doctrine of "wars of liberation" would amount to scuttling the

modern international law of peace which the Charter prescribes. And acceptance of the practice of "war of liberation," as defined by the communists, would mean the breakdown of peace itself.

IV

VIET-NAM presents a clear current case of the lawful versus the unlawful use of force. I would agree with General Giap and other communists that it is a test case for "wars of national liberation." We intend to meet that test.

Were the insurgency in South Viet-Nam truly indigenous and self-sustained, international law would not be involved. But the fact is that it receives vital external support—in organization and direction, in training, in men, in weapons and other supplies. That external support is unlawful for a double reason. First, it contravenes general international law, which the United Nations Charter here expresses. Second, it contravenes particular international law: the 1954 Geneva Accords on Viet-Nam, and the 1962 Geneva Agreements on Laos.

In resisting the aggression against it the Republic of Viet-Nam is exercising its right of self-defence. It called upon us and other states for assistance. And in the exercise of the right of collective self-defence under the United Nations Charter, we and other nations are providing such assistance.

The American policy of assisting South Viet-Nam

to maintain its freedom was inaugurated under President Eisenhower, and continued under President Kennedy and Johnson. Our assistance has been increased because the aggression from the North has been augmented. Our assistance now encompasses the bombing of North Viet-Nam. The bombing is designed to interdict, as far as possible, and to inhibit as far as may be necessary, continued aggression against the Republic of Viet-Nam.

When that aggression ceases, collective measures in defence against it will cease. As President Johnson has declared: "... If that aggression is stopped, the people and Government of South Viet-Nam will be free to settle their own future, and the need for supporting American military action there will end."

The fact that the demarcation line between North and South Viet-Nam was intended to be temporary does not make the assault on South-Viet-Nam any less of an aggression. The demarcation lines between North and South Korea and between East and West Germany are temporary. But that did not make the North Korean invasion of South Korea a permissible use of force.

Let's not forget the salient features of the 1962 Agreements on Laos. Laos was to be independent and neutral. All foreign troops, regular or irregular, and other military personnel were to be withdrawn within 75 days, except a limited number of French instructors as requested by the Lao Government. No arms were to be introduced into Laos except at the request

of that government. The signatories agreed to refrain "from all direct or indirect interference in the internal affairs" of Laos. They promised also not to use Lao territory to intervene in the internal affairs of other countries—a stipulation that plainly prohibited the passage of arms and men from North Viet-Nam to South Viet-Nam by way of Laos. An International Control Commission of three was to assure compliance with the agreements. And all the signatories promised to support a Coalition Government under Prince Souvanna Phouma.

What happened? The noncommunist elements complied. The communists did not. At no time since the agreement was signed have either the Pathet Lao or the North Viet-Nam authorities complied with it. The North Vietnamese left several thousand troops there—the backbone of almost every Pathet Lao battalion. Use of the corridor through Laos to South Viet-Nam continued. And the communists barred the areas under their control both to the Government of Laos and the International Control Commission.

To revert to Viet-Nam: I continue to hear and see nonsense about the nature of the struggle there. I sometimes wonder at the gullibility of educated men and the stubborn disregard of plain facts by men who are supposed to be helping our young to learn—especially to learn how to think.

Hanoi has never made a secret of its designs. It publicly proclaimed in 1960 a renewal of the assault on South Viet-Nam. Quite obviously its hopes of

taking over South Viet-Nam from within had withered to close to zero—and the remarkable economic and social progress of South Viet-Nam contrasted, most disagreeably for the North Vietnamese communists, with their own miserable economic performance.

The facts about the external involvement have been documented in White Papers and other publications of the Department of State. The International Control Commission has held that there is evidence "beyond reasonable doubt" of North Vietnamese intervention.

There is no evidence that the Viet Cong has any significant popular following in South Viet-Nam. It relies heavily on terror. Most of its reinforcements in recent months have been North Vietnamese from the North Vietnamese army.

Let us be clear about what is involved today in Southeast Asia. We are not involved with empty phrases or conceptions which ride upon the clouds. We are talking about the vital national interests of the United States in the peace of the Pacific. We are talking about the appetite for aggression—an appetite which grows upon feeding and which is proclaimed to be insatiable. We are talking about the safety of nations with whom we are allied—and the integrity of the American commitment to join in meeting attack. It is true that we also believe that every small state has a right to be unmolested by its neighbours even though it is within reach of a great power. It is

true that we are committed to general principles of law and procedure which reject the idea that men and arms can be sent freely across frontiers to absorb a neighbour. But underlying the general principles is the harsh reality that our own security is threatened by those who would embark upon a course of aggression whose announced ultimate purpose is our own destruction. Once again we hear expressed the views which cost the men of my generation a terrible price in World War II. We are told that Southeast Asia is far away—but so were Manchuria and Ethiopia. We are told that if we insist that someone stop shooting that is asking them for unconditional surrender. We are told that perhaps the aggressor will be content with just one more bite. We are told that if we prove faithless on one commitment that perhaps others would believe us about other commitments in other places. We are told that if we stop resisting perhaps the other side will have a change of heart. We are asked to stop hitting bridges and rader sites and ammunition depots without requiring that the other side stop its slaughter of thousands of civilians and its bombings of schools and hotels and hospitals and railways and buses.

Surely we have learned over the past three decades that the acceptance of aggression leads only to a sure catastrophe. Surely we have learned that the aggressor must face the consequences of his action and be saved from the frightful miscalculation that brings all to ruin. It is the purpose of law to guide men away

from such events, to establish rules of conduct which are deeply rooted in the reality of experience.

V

BEFORE CLOSING, I should like to turn away from the immediate difficulties and dangers of the situation in Southeast Asia and remind you of the dramatic progress that shapes and is being shaped by expanding international law.

A "common law of mankind"—to use the happy phrase of your distinguished colleague, Wilfred Jenkins—is growing as the world shrinks, and as the vistas of space expand. This year is, by proclamation of the General Assembly, International Cooperation Year, a year "to direct attention to the common interests of mankind and to accelerate the joint efforts being undertaken to further them." Those common interests are enormous and intricate, and the joint efforts which further them are developing fast, although perhaps not fast enough.

In the nineteenth century, the United States attended an average of one international conference a year. Now we attend nearly 600 a year. We are party to 4,300 treaties and other international agreements in force. Three-fourths of these were signed in the last 25 years. Our interest in the observance of all these treaties and agreements is profound, whether the issue is peace in Laos, or the payment of United Nations assessments, or the allocation of radio fre-

quencies, or the application of airline safeguards, or the control of illicit traffic in narcotics, or any other issue which states have chosen to regulate through the law-making process. The writing of international cooperation into international law is meaningful only if the law is obeyed—and only if the international institutions which administer and develop the law function in accordance with agreed procedures, until the procedures are changed.

Everything suggests that the rate of growth in international law—like the rate of change in almost every other field these days—is rising at a very steep angle.

In recent years the Law of the Sea has been developed and codified—but it first evolved in a leisurely fashion over the centuries. International agreements to regulate aerial navigation had to be worked out within the period of a couple of decades. Now, within the first few years of man's adventures in outer space, we are deeply involved in the creation of international institutions, regulations, and law to govern this effort.

Already the United Nations has developed a set of legal principles to govern the use of outer space and has declared celestial bodies free from national appropriation.

Already nations, including the United States and the Soviet Union, have agreed not to orbit weapons of mass destruction in outer space.

Already the legal subcommittee of the United

Nations Committee on Outer Space is formulating international agreements on liability for damage caused by the re-entry of objects launched into outer space and on rescue and return of astronauts and space objects.

Already the first international sounding rocket range has been established in India and is being offered for United Nations sponsorship.

To make orderly space exploration possible at this stage, the International Telecommunications Union had to allocate radio frequencies for the purpose.

To take advantage of weather reporting and forecasting potential of observation satellites, married to computer technology, the World Meteorological Organization is creating a vast system of data acquisition, analysis, and distribution which depends entirely on international agreement, regulation, and standards.

And to start building a single global communications satellite system, we have created a novel international institution in which a private American corporation shares ownership with 45 governments.

This is but part of the story of how the pace of discovery and invention forces us to reach out for international agreement, to build international institutions, to do things in accordance with an expanding international and transnational law.

Phenomenal as the growth of treaty obligations is, the true innovation of twentieth-century inter-

national law lies more in the fact that we have nearly eighty international institutions which are capable of carrying out those obligations.

It is important that the processes and products of international cooperation be understood and appreciated; and it is important that their potential be much further developed. It is also important that the broader significance of the contributions of international cooperation to the solving of international problems of an economic, social, scientific, and humanitarian character not be overestimated. For all the progress of peace could be incinerated in war.

Thus the control of force in international relations remains the paramount problem which confronts the diplomat and the lawyer—and the man in the street and the man in the rice field. Most of mankind is not in an immediate position to grapple very directly with that problem, but the problem is no less crucial. The responsibility of those, in your profession and mine, who do grapple with it is the greater. I am happy to acknowledge that this Society, in thinking and debating courageously and constructively about the conditions of peace, continues to make its unique contribution and to make it well.

"Unhappily, a minority of governments . . . are dedicated to the promotion of the communist world revolution. And their doctrine justifies any technique, any ruse, any deceit, which contributes to that end."

"The term 'war of national liberation' is used . . . to denote any effort led by communists to overthrow by force any noncommunist government."

Published by the United States Information Service, New Delhi, and printed at Albion Press, Delhi-6.